

**Erickson's Diversified Corporation d/b/a/ St. Peter More-4 and United Food and Commercial Workers International Union, Petitioner.** Case 18-RC-16330

March 17, 1999

DECISION AND CERTIFICATION OF  
REPRESENTATIVE

BY MEMBERS LEIBMAN, HURTGEN, AND  
BRAME

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on August 21, 1998, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 51 for and 17 against the Petitioner with 12 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the Regional Director's report in light of the exceptions and brief, has adopted the Regional Director's findings and recommendations,<sup>1</sup> and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Work-

ers International Union, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at its facility located at 612 South Minnesota Ave., St. Peter, Minnesota; excluding the store director, pharmacists, office clerical employees, guards and supervisors, as defined in the Act, as amended.

MEMBER HURTGEN, dissenting.

If the individuals involved here are supervisors, I would find the conduct objectionable for the reasons set forth in my dissent in *Millsboro Nursing & Rehabilitation Center*, 327 NLRB No. 153 (1999).

As more fully set forth in *Millsboro*, I do not wholly agree with current Board law as set forth in *Sutter Roseville Medical Center*, 324 NLRB 218 (1997). Although I agree with the first part of the test in *Sutter*, I disagree as to the second part of the test. In my view, supervisory solicitation of authorization cards is inherently coercive and objectionable.

In the instant case, the Employer opposed unionization and made its opinion known. Therefore, under the first part of the test in *Sutter*, the solicitation of cards could not have led employees to reasonably believe that the supervisory solicitation reflected a pronunion view on the part of the Employer. However, in a number of instances, department head managers distributed authorization cards and directed employees to sign the cards or at least strongly suggested that they should do so. Clearly, by such conduct, employees were put on the spot to declare themselves on the issue of unionization. I believe that this conduct is objectionable.

I would remand this proceeding for a determination of the impact that the conduct had on the election atmosphere. If the conduct affected the election, I would set the election aside.

<sup>1</sup> For the reasons fully set forth in *Millsboro Nursing & Rehabilitation Center*, 327 NLRB No. 153 (1999), and contrary to our dissenting colleague, we adhere to longstanding Board and court precedent involving alleged objectionable conduct based on the pronunion activities of statutory supervisors. In brief, pronunion activities of statutory supervisors may constitute objectionable conduct when: (1) the employer takes no stand contrary to the supervisors' pronunion conduct, thus leading employees to believe that the employer favors the union; or (2) the supervisors' pronunion conduct coerces employees into supporting the union out of fear of retaliation by, or rewards from, the supervisor. Neither of these conditions is present here. Accordingly, we agree with the Regional Director that, even assuming arguendo, the Employer's department heads are supervisors, there is no merit to the Employer's objections.